

**ZONING BOARD OF APPEALS**  
**MEETING MINUTES**  
**October 13, 2009**  
**4:00 P.M.**

**CALL TO ORDER:** Mr. John Stetler, called meeting to order at 4:00 p.m.

**ATTENDANCE:**

**Members Present:** Greg Dunn, James Moreno, Carlyle Sims, Becky Squires and John Stetler

**Members Excused:** Deland Davis, and Mike Fatt

**Staff Present:** Eileen Wicklund, City Attorney; Christine Hilton, Planning Supervisor; Glenn Perian, Senior Planner; and Leona Parrish, Planning Admin. Assistant.

**ADDITIONS OR DELETIONS TO THE AGENDA:**

Deletion to the agenda: Appeal # Z-12-09 (Has been pulled)

Add to the agenda the approval of Year 2010 annual meeting dates for the Zoning Board of Appeals.

**MOTION: WAS MADE BY MR. JAMES MORENO TO APPROVE THE ANNUAL MEETING DATES FOR THE YEAR 2010 FOR THE ZONING BOARD OF APPEALS; SUPPORTED BY MR. CARLYLE SIMS. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.**

**OLD BUSINESS:** None

Mr. John Stetler, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He stated he will ask for a staff report to be read and then open the public hearing. At the public hearing persons may come forward and state their name and address for the record as it is being recorded and then speak either for or against an appeal. The public hearing will then be closed and the zoning board will discuss and make a decision. Mr. John Stetler stated if denied they may appeal to the Circuit Court.

**NEW BUSINESS:**

**Appeal #Z-11-09: (10 W. Michigan Avenue)**

Mr. Glenn Perian stated this was an appeal from Mr. Jim Frisbie (Frisbie Sign Co.) on behalf of Mr. Victor J. Einhardt (owner) requesting to install a 16 sq. ft. projection sign at 10 W. Michigan Avenue for Subway Sandwich Shop which is located in a "C-7 Street Level Retail Zoning District" where 12 sq. ft. projections signs are permitted. The subject property is approximately 22 ft. wide by 90 ft. deep with a three story building occupying the lot located on Michigan Avenue between Capital Ave. and McCamly Street and is part of the Downtown Central Business Commercial Corridor.

Mr. Perian stated they have presented two proposals to the Historic District Commission for approval: 1) Flat Wall Sign; 2) Projection Sign, was submitted and both approved by the HDC subject to the ZBA granting any required variances. He noted the option submitted to the board today is the options that Mr. Frisbie referred to as the clean look or clean sign. Mr. Perian stated the Planning Department is recommending denial as it does not recognize a practical difficulty or hardship and cannot specifically

cite any reasons in particular that make this particular property unusual or unique. Staff feels in this case the hardship or practical difficulty is self created and the documentation furnished does not meet the standards outlined in the zoning code authorizing the board to grant the requested variance. Staff does not believe the alleged hardship or practical difficulties which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case.

Mr. Jim Frisbie, 8989 66<sup>th</sup> St., S.E., Alto, MI, (Frisbie Sign Co.) was present to speak on behalf of Mr. Einhardt, property owner of Subway at 10 W. Michigan, who had decided to relocate back downtown. He said they ordered a projection sign to install and was working with a woman that told him it was in a Historic District and was told they could have 30+ sq. ft. of signage. Stated when Subway does a remodel they pre-order everything as long as everything is approved. Said the sign came with a package and all their equipment and when he went to pull a permit and spoke to Mr. Perian who stated it would require a variance as the sign was too large according to regulations; this is why they are now asking to either modify the existing camera sign or take down the old camera and put a clean looking sign that had been ordered. Mr. Frisbie stated the hardship was not self created and believes that information given to them was wrongly from somebody in the Battle Creek Planning area.

Mr. Greg Dunn had asked if Mr. Frisbie had any documentation to confirm the information was provided by the Planning Department.

Mr. Frisbie stated he just had a name which was: Ms. Kathleen Eriksen.

Mr. Greg Dunn asked if Ms. Eriksen worked for the Planning Department or worked for the City of Battle Creek. (It was noted that Ms. Kathleen Eriksen was the Director of Downtown Partnership which is a branch of Battle Creek Unlimited and was not a City employee).

Mr. Perian stated that the misinformation was provided by Ms. Eriksen; referenced page 3 of 5 on the staff report, second paragraph, explains the misinformation given by Downtown Partnership and that no one had spoken to the Planning Department regarding what was allowed regarding signage.

Mr. Carlyle Sims asked seeing the new information provided; if applicant wanted to change how their application would have been submitted, as it sounds like they have been misled.

Mr. Frisbie stated that they presented it to the Historic District Commission. Stated Mr. Perian felt it was a better way to present to the Historic District and thought if they left the current sign and just modified what was there currently. The HDC did not have any problem with taking the camera down and installing the original cleaner look sign package back up. Stated Ms. Einhardt wanted to put up what someone had suggested from Downtown Partnership.

Ms. Wendy Einhardt (Subway owner), 10 W. Michigan; stated that Ms. Kathleen Eriksen Downtown Partnership had worked with her and had looked at many different types of signage, then had to work with their franchise and meet in the middle to make it work. They completed the application for the Downtown Façade funding and that Ms Eriksen stated the application etc. had looked good and was very thorough; she assumed everything was a go and purchased the \$4,000 dollar sign, not knowing the sign was not approved. Stated she cannot return the sign as it is custom made.

Mr. Greg Dunn asked why they do not put the new sign on the building as a wall sign instead of having it as a projection sign.

Ms. Einhardt said in front of the business there are a couple of trees to the east which blocks the main intersection from Capital Ave., and also Team Active has a big embankment that projects outward. Their goal was to get beyond that and be lit so it can be seen from all angles downtown. It is a double sided sign already made and to put it flat facing would not be most advantages or if it can be mounted that way as it is already made; noted the new sign is smaller than the current camera projection sign.

Ms. Terri Lassen, 260 E. Hamilton Lane, Downtown Partnership, was present in support of Ms. Einhardt (Subway) request. Stated this building has been vacant and had put thousands of dollars in the building remodeling, feels this is was a good business for the downtown area; being a franchise they are particular with their signage and she did not feel that an extra 4 sq. ft. was a problem. Said the Historic District Commission applauded them for wanting to move back downtown and did not have any problem with their request for signage.

Ms. Eileen Wicklund stated the Historic District Commission look at other factors when reviewing petitions and is not looking at the zoning ordinance. The Historic District Commission specifically acknowledged that it was the Zoning Board of Appeals that would have to make any decision with regards to the zoning ordinance itself. Their approval does not weigh on this board in terms of whether it complies with the zoning ordinance.

Mr. Greg Dunn stated to Ms. Lassen that he is aware the petitioner had worked with Ms. Eriksen and asked as a practice; when giving advice to persons do they consult the zoning ordinances.

Ms. Terri Lassen stated; yes, they have a copy of the sign ordinance to review and did have the petitioner go to the Historic District Commission for their approval. She stated a lot was happening at that time as Ms. Kathleen Eriksen was leaving etc.

Mr. Greg Dunn stated within the past year, twice there have been persons needing to go before the Zoning Board of Appeals because of the Downtown Partnership's actions. Stated they need to have persons contact the Planning Department to ensure they abide by the rules. That the ZBA have been put in position to make a decision which the board has rules they need to abide by in order to approve variance requests. Mr. Dunn stated he did appreciate the work they are doing, but if they allowed it for one then other businesses would request the same.

Ms. Lassen agrees there is an issue regarding the sign ordinance. Said the hardship is not their doing and ask for leniency as the sign they want to install is smaller than the current camera sign. Stated the Zoning Board need to look at each case as they come, and understands the Zoning Board has been put in a bad position.

Mr. Eric Kitchen, 14 W. Michigan Avenue, Schlotzsky's property owner (one door north) said he feels the law is the law and noted he had attempted to put a sign on Columbia for their business on 20<sup>th</sup> Street and has not been successful. Stated his property is just 20 ft. north of Subway and that his sign is modest and has available to him a 4 x 4 sq. ft. sign which would protrude off the building. Said he agrees with Mr. Dunn and if a larger sign was allowed he would want it also and that it would snowball.

Said he has been denied in the past and had cost him money and was an expensive lesson learned. He stated he is not in favor of approving this variance request, but was not present here today in contempt.

Mr. Carlyle Sims said there was misleading information in the meeting packet; as it noted the petitioner stated they could mount the sign on the building front and they would not have a problem with that option. Mr. Sims feels they need to meet with the Downtown Development and other merchants to reach an agreement and come-up with a plan for the downtown and present to the Planning Commission for approval.

Mr. Frisbie asked if they could use the existing camera sign and insert the face of the new sign and illuminate as the photo in the packet shows.

Ms. Eileen Wicklund, City Attorney stated it has different parameters if they used the current camera sign in addition to the Legal Non-conforming Use Ordinance, and that would need to be analyzed.

Mr. John Stetler stated as City Attorney suggested the Zoning Board does not want to comment on the use of the camera sign and said they need to work with Mr. Glenn Perian, in the Planning Department.

Ms. Einhardt said she wanted to clarify that they are not trying to do anything outside of the guidelines and do not want to have bigger and better, they are just trying to do what is allowed and are currently operating without a sign. Said they have been downtown for 15 years and purchased an empty building and put thousands of dollars in to it want to do as best they can; noted they are in debt for this sign and are asking for leniency and just want to conduct business.

***Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.***

***MOTION: MR. CARLYLE SIMS MADE A MOTION TO APPROVE # Z-11-09 TO ALLOW A 16 SQ. FT. PROJECTION SIGN AS SUBMITTED FOR PROPERTY LOCATED AT 10 W. MICHIGAN AVENUE, SUPPORTED BY MR. JIM MORENO.***

**Discussion:**

Mr. Greg Dunn stated he had said how he felt and has not heard anything that would change his opinion. He does not see a hardship and feels that it was self created. Said he would be voting against.

Mr. John Stetler stated he agrees with the staff reports findings. Feels the Zoning Board does not have the authority change the ordinance and to approve.

***MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION FAILED.***

**Vote Findings and Comments:**

The board asked it be noted for the record that their vote findings are based on their agreement with the staff report.

Mr. John Stetler, Chairperson, stated the petitioner has the option to appeal the decision of the Zoning Board to the Circuit Court.

**Appeal #Z-12-09: (2822 Capital Avenue, S.W.) - PETITION PULLED**

Mr. Glenn Perian stated the application has been pulled from the agenda; as the petitioner provided information that showed a variance would not be required.

**APPROVAL OF MINUTES:**

**MOTION: WAS MADE BY MR. CARLYLE SIMS TO APPROVE THE AUGUST 11, 2009 ZONING BOARD OF APPEALS MINUTES; SUPPORTED BY MR. GREG DUNN. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.**

**COMMENTS BY THE PUBLIC:** None

**COMMENTS BY THE MEMBERS / STAFF:**

Mr. John Stetler said he was glad to see Mr. Gentry Hammons in the audience as he had been a member of the Zoning Board for many years.

Mr. Greg Dunn wanted to welcome Ms. Becky Squires as a board member to the Zoning Board of Appeals and feels they will be well served as her tender as City Commissioner and Vice-Mayor of the City. States he has a lot of respect for Ms. Squires and sure she will do an excellent job on the ZBA.

Mr. Carlyle Sims asked Mr. Perian if the Planning Department worked with the Downtown Partnership.

Mr. Glenn Perian stated yes, as it was noted in the staff report that the city ordinance amendment regarding the projection signs was approved and driven by the Downtown Partnership in 2006. Therefore, they should have been very aware of what required and stated in the city ordinance.

Mr. Carlyle Sims stated we need to provide as much help as needed to not discourage businesses from moving downtown. The Downtown Partnership should have a check list to use and abide by so persons are not misled.

Mr. Greg Dunn stated he finds it stunning that someone in charge of economic development downtown would not be aware of what the ordinance states regarding the use of downtown properties when advising persons.

Mr. James Moreno stated if they were working with the client; they should have done all their due diligence completely before they jump the gun.

Ms. Becky Squires stated as a former City Commissioner; what she would say to city staff is that we need to be proactive as city staff and work with Downtown Partnership to provide information until they get it right. She believes it was said there was a letter provided to the applicant from Downtown

Partnership that stated they needed to contact the City, that the business owner had accidentally overlooked.

Mr. Glenn Perian welcomed Ms. Becky Squires to the Zoning Board and stated the Planning Department staff was available to her for any help that she might need working through the process and helping to get her acclimated.

Mr. Perian also introduced Ms. Christine Hilton, the new Planning Supervisor for the City of Battle Creek who has been with the city now four weeks. She has been getting up to speed with what is happening in the department such as Accessory Buildings, Master Plan, etc. and has been working out well.

**ADJOURNMENT:** Mr. John Stetler moved for the meeting to be adjourned; meeting was adjourned at 4:44 p.m.

Submitted by: Leona A. Parrish  
Administrative Assistant, Planning Department